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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 79.

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, as President of the AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

REPLY BRIEF FOR PETITIONER.

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Of Counsel

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Two arguments in respondents' memorandum in opposition to certiorari require a reply:

1. Respondents' memorandum creates the impression that denial of certiorari in another case is virtually dispositive of the petition for certiorari here (Br. 2-3):

> "If there was no compelling reason to review the jurisdictional determination in the *Ruby* case, there would appear to be no compelling reason to review the jurisdictional determination by the same Court in this case—the principal reason the Company advances for granting the writ."

As shown more fully below, respondents' discussion of the *Ruby* case is misleading in two respects:

(a) if anything, the denial of certiorari in the *Ruby* case would *support* the granting of certiorari here rather than its denial; and

(b) respondents were not even parties in the appeal relied on, contrary to the impression given, but the separate appeal in which they *are* parties is the subject of independent petitions for certiorari which are currently pending.

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(a) The case relied upon by respondents—*Ruby* v. *American Airlines, Inc.*, 323 F. 2d 248 (2 Cir. 1963), certiorari denied, 376 U. S. 913—upholds the exclusive jurisdiction of an agency created by Congress to decide a labor dispute. Exclusive jurisdiction of such an agency is also the rule which we believe to govern this case. *Ruby* holds that the National Mediation Board has exclusive jurisdiction over questions of representation; here, we contend that the Adjustment Board has exclusive jurisdiction over disputes involving the administration of labor agreements. Thus, if denial of certiorari indicates satisfaction with the result reached by a lower court, as respondents assume, the denial of certiorari in the case on which they rely would be a factor leading to the *granting* of certiorari here.

(b) One can read respondents' entire discussion of the *Ruby* case without being informed that respondents were not even parties to the appeal, but were severed out, *sua sponte*, by the District Court. *Ruby* v. *American Airlines, Inc.*, 227 F. Supp. 702 at 704 (S. D. N. Y. 1963). The appeal relied on by respondents therefore involved no aspect whatever of the litigation between petitioner and respondents, as the Court of Appeals was careful to point out (323 F. 2d. at 249, fn. 1):

"Judge Wyatt's opinion also dealt with a related dispute between American and . . . [respondents]. This is not before us, and *we intimate no views in its regard.*" (Emphasis added.)

The case in which respondents are parties was decided by a different panel of judges in the Court of Appeals (329 F. 2d 11), and is now before this Court in the form of two independent petitions for certiorari: *O'Connell* v. *Manning*, No. 454, and *American Airlines, Inc.* v. *Manning*, No. 455.

Respondents' opening comment is that their opposition is in "memorandum form" because our reasons for seeking certiorari are "plainly insubstantial" (Br. 1). We submit that this is hardly an excuse for not telling the whole story—which, when told, shows respondents' chief argument to be entirely without merit.

2. Nor is the whole story told in respondents' statement that "... it is undisputed that the [dues check-off] agreement terminated (Pet. 5)." (Br. 3) What "Pet. 5" *says* is that "the parties intended that the dues check-off would end on April 30, 1963. . . ." Thus, as we interpret the dues check-off agreement, it contains an affirmative undertaking by the two parties that the dues check-off would end on a date certain, not simply that the contract itself would expire. This interpretation is based on the language of the duration clause, the negotiating history of the agreement, the interpretation and application of contemporaneous documents, and past practice in the Company and the industry—all of which we believe to be properly matters for the specialized determination of the Adjustment Board with a prominent labor arbitrator sitting as neutral. As this Court recently remarked in *John Wiley & Sons, Inc.* v. *Livingston*, 376 U. S. 543 at 555 (1964), upholding arbitrability of questions arising under an expired agreement,

> "We see no reason why parties could not if they so chose agree to the accrual of rights during the term of an agreement and their realization after the agreement had expired."

Further, the duty to arbitrate here arises not under the dues check-off agreement at all, but by virtue of the parties' commitments in two separate agreements—the System Board of Adjustment agreement and the basic working agreement—which contain the grievance and Adjustment Board procedure. Respondents do not deny that these separate agreements *have* remained in effect. Under them, the System Board of Adjustment is a duly authorized, currently functioning body, with jurisdiction over this dispute.

Conclusion.

The petition for certiorari should be granted.

Dated: New York, New York
September 24, 1964

Respectfully submitted,

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